

REMARKS

This Amendment Under Rule 37 CFR §1.116 is respectfully submitted in response to the Final Rejection rendered August 8, 2005. It is timely in view of the Petition for Extension of Time respectfully submitted concurrently herewith. A Notice of Appeal is respectfully submitted for the purpose of maintaining the pendency of this application. Applicants respectfully request entry of this Amendment as it places the claims in better form for allowance.

Claim 1 has been amended recite to measuring changes in the skin of a human utilizing a non-contact optical profiling instrument that enables the generation of three-dimensional images from a single shot that produces two flashes. This amendment finds basis in the Specification at p. Support for this amendment comes from the last paragraph on page 6, l. 21 through p. 7, l. 7.

The Final Rejection of August 8, 2005 ("Final Rejection") suggested the filing of substitute drawings. Applicants respectfully submit herewith a clearer set of drawings.

The Final Rejection rejected Claims 1 – 6 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,670,781 to Aubert et al ("781") in view of JP 08100316A ("316"). Applicants respectfully request reconsideration of this rejection in view of the foregoing amendments to the claims and the ensuing discussion.

The '781 patent describes a method for demonstrating the effectiveness of slimming products or treatments in changing the shape of an individual. The '781 patent further describes the use of a video camera and an image analyzer to superimpose one image over another. Nowhere does the patent teach or suggest the use of three-dimensional images or a method for creating such an image. As noted in the Final Rejection, the '781 patent describes the use of *four* different viewpoints to carry out a three-dimensional analysis. [781 Patent, col. 2, l. 2-8] It further includes elaborate procedures such as using a turntable with reference markers drawn towards proper positioning of the subject. [781 Patent, col. 2, l. 9-17] However, such procedures incur great difficulty in accurately measuring the same area of the skin for comparison purposes, obviously leaving room for significant errors. The '781 patent thus neither teaches nor suggests a means for

measuring changes in human skin by generating three dimensional images from a single camera shot.

The '316 patent does not compensate for the deficiencies of the '781 patent in leading one of ordinary skill in the art to the method of applicants' invention. The '316 patent refers to the use of imaging equipment to demonstrate the effects of underwear on slimming and lifting portions of the human body. While the '316 patent does teach the use of three-dimensional images, these three-dimensional images are generated from *multiple* images taken from different directions (See, for example, the Basic Abstract, sentence 4). This technique is quite susceptible to error due to the multiplicity of images and directions from which the images are obtained. Thus, the '316 patent, taken by itself or together with the '781 patent, would not have motivated one of ordinary skill in the art at the time the invention was made to arrive at the method of applicants' invention.

As amended, the present claims require comparing three-dimensional images taken utilizing a non-contact optical profiling instrument. The optical profiling instrument provides the ability to accurately and reproducibly capture three-dimensional images. Each three dimensional image is generated from *two* flashes obtained in a *single* shot. Due to the nature of the instruments and the methodology utilized in the method of applicants' invention, the positioning of the subject is not as critical as in the techniques described in the '781 and '316 patents. Furthermore, the instruments used in the method of applicants' invention enable accurate analysis of much more detailed areas of the skin. For example, the method of the claimed invention has been shown to enable analysis and demonstration of reduced fine lines and wrinkles, increased eye opening, changes in the surface of the skin and the like. [Specification, p. 27, l. 26 through p. 29, l. 2 and p. 34, Fig. 1] None of this level of detail has been taught or suggested in the cited and relied-upon art.

For the foregoing reasons, Applicants respectfully request reconsideration of the rejection under 35 U.S.C. §103 based upon the combination of the '781 patent in view of the '316 patent. Applicants respectfully submit that the foregoing amendments place the claims in better form for allowance and respectfully request entry of this Amendment.

The Examiner is respectfully invited to contact Applicants' representative at the number provided below if it is felt that a discussion would be helpful in resolving the outstanding issues.

Respectfully submitted,

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